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16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN FRANCISCO DIVISION

19 UNITED STATES OF AMERICA,) CASE NO. CV 20-7811 RS
20 Plaintiff,)
21 v.)
22 Approximately 69,370 Bitcoin (BTC), Bitcoin)
23 Gold (BTG), Bitcoin SV (BSV), and Bitcoin)
24 Cash (BCH) seized from)
1HQ3Go3ggs8pFnXuHVHRytPCq5fGG8Hbhx)
Defendant.)
First 100, LLC, 1st One Hundred Holdings,)
LLC, and Battle Born Investments)
Company, LLC,)
Claimants.)

) **REPLY IN SUPPORT OF MOTION TO STRIKE**
THE CLAIMS OF CLAIMANTS BATTLE
BORN INVESTMENTS COMPANY, LLC,
FIRST 100, LLC AND 1ST ONE HUNDRED
HOLDINGS, LLC
Hearing Date: September 9, 2021
Time: 1:30 p.m.
Court: Hon. Richard Seeborg

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1 **I. INTRODUCTION**

2 Claimants Battle Born Investments Company, LLC; First 100, LLC; and 1st One Hundred
 3 Holdings, LLC (collectively and hereinafter, “Claimants”) come no closer to making a colorable claim
 4 in their opposition brief than they did in their verified claims or meet and confer discussions with
 5 government counsel. In plain terms, Claimants argue that they are entitled to special treatment with
 6 respect to lateness. As to standing, they make argumentative leaps amounting to nothing more than
 7 speculative assertions of ownership undermined by the very nature of the Defendant Property as illicit
 8 proceeds from a darknet marketplace.

9 Claimants provide no valid justification for their late filing. In fact, their rationale for asking the
 10 Court to give them a pass further militate in favor of dismissing their claims at this juncture. Claimants
 11 plainly admit that they did not know what the filing deadline was or even that it existed. To overcome
 12 this deficiency, they double down on their *mea culpa*, which actually has the effect of revealing the
 13 extent of their negligence in pursuing their claims. There may be situations where a late filing should be
 14 excused. This is not one of them.

15 Claimants also fail to demonstrate standing. Their arguments have evolved radically over a short
 16 period of time yet continue to miss the mark. Their claims are based on their purchase of the bankruptcy
 17 estate of Raymond Ngan, but there is no evidence that Ngan ever possessed, let alone legally owned, the
 18 bitcoin at issue. As an alternate theory, Claimants have argued that 13 different individuals purportedly
 19 associated with Ngan may be Individual X. Each of those guesses has been wrong, and there is no
 20 indication that those associations—such as being in the same city at the same time as Ngan—would
 21 make property stolen by another person the property of Ngan’s bankruptcy estate.

22 The reasoning for this confusing line of argument is readily apparent—Claimants’ attempt to
 23 discredit the government’s conclusion regarding the source of the Defendant Property as originating in
 24 Silk Road is the only real avenue they have to overcome their lack of standing. According to the data
 25 preserved in Silk Road’s servers, seized by the government in the prosecution of Ross Ulbricht and Silk
 26 Road in 2013, the Defendant Property in this case originated from the same addresses used by Silk Road
 27 users to purchase drugs and other illicit goods and services. In other words, before they were stolen and
 28 moved to 1BAD and 1BBq, the seized 69,370 bitcoins (“BTC”) were located in wallets that were

1 subsequently seized and forfeited by the government in Ulbricht's criminal prosecution. This is
 2 confirmed by blockchain analysis and Ulbricht's own admission that the Defendant Property consists of
 3 proceeds traceable to criminal activity related to Silk Road, including narcotics trafficking and money
 4 laundering. Claimants accordingly have no basis for their claims, and the Court should strike them now.

5 Finally, to avoid unnecessary and protracted litigation, and to the extent that revealing Individual
 6 X's identity in a safe manner would assist the Court in evaluating the claims, the government is willing
 7 to disclose the identity of Individual X to the Court, *ex parte*, and in camera.¹

8 **II. ARGUMENT**

9 **A. Claimants Fail to Provide a Legitimate Reason to Justify Their Untimely Claims**

10 Claimants admit that they missed the deadline to file their claims because they did not know
 11 what the deadline was or even that a deadline existed. Yet, they advance two main arguments to
 12 counteract this insurmountable hurdle, both of which militate in favor of striking their claims.

13 First, Claimants argue that they were entitled to direct notice, and demand an opportunity to
 14 conduct discovery to ascertain what steps the government took to identify them as potential claimants.²
 15 Ngan is one of dozens of individuals who have claimed ownership of 1HQ3 without having the private
 16 key to access or move the funds in the Bitcoin address.³ All Claimants have connecting Ngan to 1HQ3

17 ¹ There are real safety concerns for keeping the identity of Individual X confidential, including
 18 threats Individual X received from Ulbricht.

19 ² Claimants also blame the government for not mentioning the deadline until the meet and confer
 20 on May 24, 2021. *See* Opp'n at 19 ("It was not until two months later, during a virtual meeting to
 21 discuss the claims on May 24, 2021, that the Government first mentioned that the claims were late.").
 22 Claimants insist on representing the nature of those discussions as settlement discussions. But as Jeffrey
 23 Nicholas states in his declaration, Claimants' counsel undertook a "process of compiling supporting
 24 documentation and preparing a memo outlining [their] position." Dkt. No 98-1 ¶ 5. A discussion of that
 25 compilation and the basis of their claims so that the government could better understand the claims was
 26 precisely the reason for the meeting on May 24. There was nothing to settle because at no point have
 27 Claimants articulated a claim sufficiently valid to warrant any type of settlement.

28 ³ Because Bitcoin was designed to cut out intermediaries, holding the private key is critical.
 29 Indeed, there is a reason for the phrase "not your keys, not your bitcoin," because it "exemplifies the
 30 importance of actually possessing the private key to a Bitcoin address to establish true ownership."
 31 Haynie Decl., Dkt. No. 90-1 ¶ 17. Claimants dismiss this reality by arguing that Bitcoin "lacks the
 32 traditional means of establishing ownership, or even possession . . ." Opp'n at 8. But if Ngan was the
 33 true owner of 1HQ3, there is no reasonable explanation why other parties would have also had the
 34 private key to that address. If that was the case, the 69,370 BTC would not have lasted in 1HQ3 for a
 35 second—much less seven years. And if Individual X stole or illegitimately moved the bitcoin in 1HQ3
 36 from Ngan—something not borne out by publicly available information on the blockchain—Ngan would
 37 have reported it to law enforcement. But Ngan did no such thing, because that did not occur.

1 is a screenshot of 1HQ3 from a publicly available website that Ngan sent in a text message to a private
 2 party. This screenshot, which could be generated by anybody, is insufficient to establish ownership,
 3 possession, or control. How this would trigger a direct notice requirement is incomprehensible.

4 According to Claimants, nothing in the record “suggests that the Government undertook an
 5 investigation concerning the identity of other persons or identities who may have an ownership interest
 6 in the 1HQ3 wallet.” *See* Opposition Brief (“Opp’n”), Dkt. No. 98 at 13. This is simply incorrect. There
 7 is ample evidence of the investigation memorialized in each of the declarations submitted by Special
 8 Agent (SA) Haynie in this action. Moreover, the extent of the government’s investigation into one of the
 9 most sophisticated online criminal marketplaces and subsequent prosecution of its owner cannot be
 10 overstated. When the government seized the Silk Road website in 2013, it preserved its servers, which
 11 contain the entire transaction history and users of the website. This includes a history of the transactions
 12 resulting in 70,411.46 BTC withdrawn from Silk Road on May 6, 2012 which, based on blockchain
 13 tracing, ended up in 1HQ3. The subsequent investigation of Silk Road’s assets—including 1HQ3—
 14 revealed no connection whatsoever to Ngan or Claimants. Indeed, through its extensive investigation,
 15 the government found no other individual who would have a claim to the proceeds of Silk Road other
 16 than Ross Ulbricht. Claimants’ argument that the government failed to conduct a proper investigation is
 17 smoke and mirrors, and nothing more than an attempt to conduct irrelevant discovery in this case.

18 Second, in simple terms, Claimants are asking for special treatment. Blaming the government for
 19 not providing direct notice is seemingly designed to circumvent Claimants’ negligence in not pursuing
 20 timely claims despite—by their own admission—knowing about the 1HQ3 wallet’s existence since at
 21 least 2019. *See* Opp’n at 11-12 (stating that Battle Born planned to compel Ngan to turn over the
 22 contents of 1HQ3 during an evidentiary hearing in the Bankruptcy Action in December 2019).
 23 Claimants argue that the value of the asset at issue must factor into the Court’s evaluation of whether it
 24 should exercise its discretion to allow an untimely claim to proceed. Insofar as this case is concerned,
 25 the government wholeheartedly agrees. The value of the Defendant Property underscores Claimants’
 26 negligence in failing to make a timely claim. Given the sheer value of the Defendant Property—the
 27 seizure of 69,370 BTC from 1HQ3 is the largest seizure of cryptocurrency in the history of the
 28 Department of Justice and appears to be the most valuable asset ever seized under the Civil Asset

1 Forfeiture Reform Act—combined with their knowledge of their purported right to claim this asset,
 2 Claimants’ failure to file timely claims is inexcusable. Claimants only needed to occasionally track the
 3 1HQ3 wallet through the public blockchain, yet they failed to do even that with an asset valued in the
 4 billions of dollars.

5 There is no justification for a party who has spared no expense in hiring an army of lawyers and
 6 investigators not to file a claim for such a valuable asset on time. The Court does have the discretion to
 7 allow an untimely claim to proceed despite a failure to comply with the pleading requirements. But this
 8 case demonstrates precisely why courts have established a framework to guide courts in determining
 9 whether they should exercise that discretion. None of the factors adopted by the Ninth Circuit militate in
 10 favor of that exercise of discretion here. Saying “*mea culpa*, we missed the deadline, but give us a
 11 chance because it is a lot of money” does not cut it. The government is not aware of any cases or law
 12 that confer special rights to a wealthy party so that it can become richer. Under Claimants’ argument, a
 13 Claimant of modest means who makes a claim for an asset of lower value should not get a pass.

14 Notably, of the numerous lawyers working for Claimants, one bankruptcy attorney—Ryan
 15 Andersen—reportedly “reviewed the docket entries in the forfeiture action on PACER” on January 29,
 16 2021, the day after Jay Bloom reportedly received a text message from his business partner with a link
 17 to an article about the government’s seizure. Opp’n at 13-14. By his own admission, Andersen did not
 18 review the limited entries on the docket. *See* Dkt. No. 98-5 ¶ 10 (“I did not see anything on the docket
 19 report to indicate a deadline for claimants to file a claim for the seized Bitcoins. As of January 29, 2021,
 20 the docket contained five entries entitled ‘certificate of service’ and I did not believe that a proof of
 21 service form would provide information relevant to the Claimants’ claims.”). This attempted
 22 justification is astounding. On January 29, 2021—the day Andersen reportedly reviewed the docket—
 23 there were only 46 docket entries in this matter. Several potential claimants had appeared in the case,
 24 which was patently clear on the face of the docket. Docket Entry No. 46, the last entry on the day
 25 Andersen reviewed the docket, is an Order granting Ross Ulbricht’s *request for an extension of time to*
 26 *file a claim*, a description that was clearly stated in the minute entry. In fact, when Andersen reviewed
 27 the docket, the phrase “extension of time to file” appeared in four separate docket minute entries. That
 28 Andersen tries to hide behind the purported obscurity of certificates of service without bothering to open

1 a single one of them and choosing to overlook the fact that multiple claimants had filed motions to
 2 extend the time to file their claims is simply inexcusable, particularly when evaluating a potential
 3 recovery worth \$2 billion dollars. Had Andersen taken a few minutes to look at the docket entries he
 4 would have seen that Dkt. No. 25, a three-page document titled “Declaration of Publication” filed on
 5 January 6, 2021, contained an attachment on page three stating that “[a]ny person claiming a legal
 6 interest in the Defendant Property must file a verified Claim with the court within 60 days from the first
 7 day of publication (November 27, 2020) of this Notice on this official government internet web site . . .
 8 .” Dkt. No. 25 at 3. Andersen further tries to justify his oversight by stating that his practice “specializes
 9 in bankruptcy matters and [he does] not have specific expertise in civil forfeiture.” Dkt. No. 98-5 ¶ 10.
 10 But no specialty is necessary, much less required, for any lawyer to open a document on PACER and
 11 understand the meaning of a simple phrase setting out the framework for a filing deadline.

12 To further underscore Claimants’ negligence, it is difficult to comprehend how, having the
 13 bitcoin deposit address of 1HQ3 available to them as early as December 2019, and “data scientists,
 14 forensic experts, private investigators, and attorneys [hired since 2017] to assist Claimants in tracking
 15 down [] Ngan’s assets . . . to enforce a [\$2 billion dollar] judgment against him, and to track down the
 16 assets . . .” nobody bothered to keep track of 1HQ3 on the publicly available blockchain. Had they done
 17 so even on a semi-regular basis, they would have seen that one of the most valuable bitcoin addresses
 18 moved its funds on November 3, 2020, something that was widely reported by multiple global news
 19 outlets.⁴ Indeed, unrelated parties started commenting on the movement of the 1HQ3 funds in social
 20 media minutes after it occurred and before news outlets picked up the story a day later. It is
 21 incomprehensible that while uninterested parties were tracking 1HQ3, Claimants did not. Even more
 22 astonishing is Claimants’ failure to file their claims for nearly seven weeks after learning of the pending
 23 action, as well as their failure to file a motion to extend the time to file a claim when discovering their
 24 claims were late on May 24, 2021. Opp’n at 14; Dkt. No. 90-2 ¶¶ 7-8.

25 Because Claimants have not presented an adequate excuse to their late filing, the Court should
 26

27 28 ⁴ There are monitoring services designed to send alerts when a bitcoin address sends or receives
 bitcoin. One such service is <https://cryptocurrencyalerting.com/>, which was established in 2018.

1 dismiss their claims on this basis alone. Allowing their claims to proceed “would subvert the strict time
 2 limits established by Supplemental G(5) and encourage claimants to litigate every untimely filing in a
 3 forfeiture case.” *United States v. \$25,790*, 2010 WL 2671754, *4 (D. Md. July 2, 2010). If the Court lets
 4 these Claimants, who failed to file a timely claim despite having significant resources at their disposal,
 5 and whose justification amounts to nothing more than “we didn’t know but we are sorry,” then
 6 anyone—literally anyone—can come forward to make a claim for the seized Silk Road proceeds,
 7 making an unmanageable avalanche of claims a real possibility.

8 **B. Claimants’ Statement of Facts is Riddled with Inaccuracies and Unsupported
 9 Assumptions about Ngan’s Possession of 1HQ3**

10 At the outset of Claimants’ involvement in this matter, they appeared to be quite convinced that
 11 Ngan was Individual X or somebody associated with Individual X and structured their claims on that
 12 assumption. Having now realized that Ngan is not Individual X, they have shifted their argument to
 13 alleging Ngan’s “association” with Individual X, no matter how removed. This is evident in their recent
 14 “discovery” of “a possible connection between Mr. Ngan and an individual that may be the
 15 Government’s Individual X—Nikita Kislytsin.” Opp’n at 30. Claimants attempt to draw a connection
 16 based on the fact that Kislytsin, who was associated with foreign hacking efforts unrelated to this case,
 17 “listed Las Vegas as his location on Twitter at roughly the same time Mr. Ngan lived there.” *Id.* Nikita
 18 Kislytsin is not Individual X and the connection drawn between Ngan and Kislytsin is nothing short of a
 19 stretch. *See* Haynie Decl. ¶ 4. The Court should not entertain Claimants’ endless guesswork.

20 As a preliminary matter, it is important to recognize that if the \$2 billion judgment was against
 21 Ngan, that Ngan was the one who declared bankruptcy, and that Claimants purchased the assets of the
 22 bankruptcy estate which included the property interests of Ngan, then the claims should be limited to the
 23 property of Ngan and not his associates. To be clear, the government denies that Individual X is even
 24 associated with Ngan, but points this out to illustrate the legal impossibility of Claimants’ assertions that
 25 Ngan’s associates may yield a claim to the Defendant Property. Ngan may have had access to
 26 cryptocurrency, but that certainly did not include 1HQ3. Even assuming Ngan was prepared to sell
 27 Bitcoin, none of the documents Claimants provide even mention 1HQ3 or the specific figure of 69,370
 28 BTC except for the screenshot from the blockchain explorer and sent in a text message with no

1 additional explanation. *See* Declaration of Jacky Lee, Dkt. No 98-2 Exhibits 1-6, 9-11. Indeed,
 2 depending on the document, Ngan was supposed to sell more than 69,370 BTC. *See id.*, Ex. 1
 3 (“1,000,000 BTC”); Ex. 2 (“100,000 BTC”); Ex. 3 (“in excess of 100,000 Bitcoins”); Ex. 9 (“3 million
 4 BTC”). The numbers simply do not add up.

5 Claimants further argue that Ngan “would not have realized any profit unless he actually had
 6 possession of the Bitcoin and was able to deposit it into the law firm’s escrow account, from where it
 7 could be transferred to the buyer.” Opp’n 26. There are numerous reasons why someone would claim to
 8 have assets they did not have. Indeed, that is the hallmark of criminal activity involving fraud—to lure
 9 potential victims by gaining their trust, secure loans without real access to collateral, provide a false
 10 sense of legitimacy, etc. The same question can be posed to Jay Bloom—what did Ngan have to gain by
 11 offering to invest \$160 million in his businesses ventures if he did not have the money? He likely did
 12 not have the money, which is why he filed for bankruptcy and disappeared. The same thing happened
 13 with the bitcoin “sale”—none of those transactions came to fruition and when Ngan was set to appear in
 14 court, he vanished.

15 Despite all of this and recognizing that a mere screenshot might not be enough, Claimants
 16 attempt—based on an inaccurate reading of the government’s complaint—to convince the Court that
 17 Ngan really did own the Bitcoin in 1HQ3. Specifically, Claimants argue that one of Ngan’s associates
 18 “deleted fifty-four files from Mr. Ngan’s devices—a *number corresponding to the number of wallets*
 19 *that originally held the Bitcoin* that was transferred into the 1HQ3 wallet at issue in this action.” Opp’n
 20 at 10-11 (emphasis added). Nowhere has the government ever claimed that the contents of 1HQ3 came
 21 from 54 different wallets. What the government has said is that law enforcement officers “observed 54
 22 transactions that were sent from Bitcoin addresses controlled by Silk Road.” Dkt. No. 8 ¶ 15. Not 54
 23 Bitcoin addresses or 54 Bitcoin wallets—54 *transactions*. This is, at best, a misreading of the
 24 government’s statements, and betrays a deep misunderstanding of how Bitcoin works.⁵ Claimants’

25
 26 ⁵ Although people often use them interchangeably, there is a significant distinction between a
 27 cryptocurrency wallet and an address. A wallet is a collection of private keys and corresponding
 28 addresses. Haynie Decl. ¶ 22. It is typically under the control of a single private individual or service. *Id.*
 An address is a digital destination used to send and receive cryptocurrency funds. *Id.* ¶ 5. It is similar to
 a physical house address or an email address. Cryptocurrency wallets often contain many addresses. *Id.*
 A Bitcoin address is a hash of the public key and consists of 26-35 alphanumeric characters. *Id.*

1 argument also makes no sense because Bitcoin transactions are not saved in a hard drive as separate files
 2 when they take place. Haynie Decl. ¶ 11.

3 **C. The Defendant Property Is Drug Money from Silk Road**

4 The Court does not have to take the government's word for the conclusion that the Defendant
 5 Property emanated from Silk Road. Various sources confirm this without the need for discovery.

6 First, before it was stolen and moved to 1BAD and 1BBq, the 69,370 BTC was located in wallets
 7 that were subsequently seized and forfeited by the government in the criminal prosecution of Ross
 8 Ulbricht. Haynie Decl. ¶ 25. This is confirmed by Silk Road's own servers, which were seized and
 9 reviewed by law enforcement. Haynie Decl. ¶¶ 7, 20, 21, 24. More specifically, Individual X sent the
 10 stolen bitcoin to 1BAD & 1BBq in 54 separate transactions. Each of those transactions was funded by
 11 multiple bitcoin addresses associated with Silk Road. In total, 1BAD & 1BBq were funded by
 12 approximately 3,056 sending addresses. *Id.* ¶ 24. This figure can be obtained by looking at the number
 13 of sending addresses for each of those transactions in any blockchain explorer or blockchain analytics
 14 software, all of which is publicly available information. *Id.* Of the 3,056 sending addresses, 3,014 were
 15 deposit addresses for Silk Road users. The IRS determined this by comparing each of the 3,056
 16 addresses with the addresses stored in the data from the seized Silk Road servers. *Id.* This means that 98
 17 percent of the sending addresses that funded 1BAD & 1BBq, and therefore 1HQ3, were addresses used
 18 by Silk Road users to purchase drugs and other illicit goods and services. *Id.*

19 Second, blockchain analysis provides an indisputable trail of the bitcoins from Silk Road wallets
 20 to 1HQ3, where the government took possession of 69,370 BTC. Exhibits 1 and 2 to SA Haynie's
 21 declaration, which illustrate the analysis he conducted using blockchain analytics software and is based
 22 on immutable transactions recorded on the blockchain, show a link between 1HQ3 and Silk Road.⁶ See
 23 Haynie Decl. ¶¶ Exhibit 16-20, Exs. 1-2. Exhibit 1 illustrates the progression of the Defendant Property
 24 from Bitcoin addresses controlled by Silk Road to 1HQ3. SA Haynie used Chainalysis Reactor, an
 25

26 ⁶ The Court can, and should, consider information from the blockchain as it forms the basis for
 27 the Amended Complaint and is derived from the public record. Courts are permitted to evaluate
 28 materials attached to complaints and public records "without converting the motion to dismiss into a
 motion for summary judgment." *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1002 (9th Cir.
 2018); *United States v. Ritchie*, 342 F.3d 903, 907-08 (9th Cir. 2003) (citations omitted).

1 investigative software tool that connects cryptocurrency transactions and addresses to real-world entities
 2 like Silk Road by using aggregate data. *Id.* ¶¶ 13, 15, 17. By inputting the 1HQ3 address into Reactor, its
 3 algorithms automatically created a link between that address and Silk Road, which Chainalysis has
 4 identified as a known entity based on several factors and data points. *Id.* ¶ 15. From this information, SA
 5 Haynie was able to determine that the ultimate source of the funds in 1HQ3 originated from addresses
 6 managed by the same entity—the Silk Road marketplace. *Id.* Exhibit 2 further illustrates that
 7 Chainalysis identified and labeled the two seizures of Silk Road funds—the first in October 2013 and
 8 the second in November 3, 2020. *Id.* ¶ 19.

9 Finally, it is the consensus among blockchain analytics companies like DMG Blockchain
 10 Solutions (“DMG”), that the bitcoin at issue here originated from Silk Road. *Id.* ¶ 26. On or about
 11 November 4, 2020, the day after the government’s seizure of the bitcoin at issue and a day before it
 12 announced the seizure, Elliptic Co-Founder and Chief Scientist Dr. Tom Robinson wrote, “...through
 13 blockchain analysis we can determine that these funds likely originated from the Silk Road.”
 14 (<https://www.elliptic.co/blog/1-billion-silk-road-bitcoins-are-on-the-move>). *Id.* ¶ 27. Similarly, on or
 15 about November 4, 2020, blockchain analytics company CipherTrace issued a similar article that stated
 16 in part, “On November 3, more than 69,370 BTC originating from the Silk Road – one of the first
 17 darknet markets – moved for the first time since April 2015...” (<https://ciphertrace.com/nearly-1b-from-silk-road-move-for-first-time-since-2015/>). *Id.* ¶ 28. This further calls into question Lee’s conclusion
 19 that “the blockchain transactions show that the Bitcoins came from 58 sources,” particularly given his
 20 access to blockchain analytics tools and the fact that the origin of the bitcoin at issue here is clear to so
 21 many major blockchain analytics companies who have conducted a similar analysis. *See id.* ¶ 19.

22 **D. Claimants’ Challenge to the Source of the Defendant Property is Based on Flawed
 23 Assumptions and a Misreading of the Law**

24 Claimants’ argument that the Defendant Property came from 54 different Silk Road wallets is the
 25 framework for their attempt to undermine the well-known origin of the Defendant Property. This is
 26 Claimants’ only real option, however, because only by questioning the provenance of the Defendant
 27 Property can they respond to the chief reasons that their claims fail, namely, that (1) Ngan’s bankruptcy
 28 estate could not have contained the defendant Property because a thief does not have a legal interest in

1 stolen property; and (2) a criminal’s interest in stolen property does not become part of his bankruptcy
 2 estate because of the relation-back doctrine.

3 Claimants dismiss the government’s position that Individual X stole the bitcoin in 2012,
 4 transferred it to 1HQ3 in 2013, and gave it to the government on November 3, 2020 as “farfetched,”
 5 “implausible,” and “impossible.” Opp’n at 26. If anything is farfetched, it is Claimants’ attempt to
 6 discredit the well-known origins of the Defendant Property by submitting the declaration of Jacky Lee, a
 7 data scientist with DMG, which furthers Claimants’ arguments in no meaningful way and consists of
 8 nothing more than a vehicle through which Claimants have introduced irrelevant exhibits into the
 9 record. Indeed, nothing submitted with Lee’s declaration even mentions 1HQ3 or the specific amount of
 10 Bitcoin at issue here except for the online screenshot of 1HQ3 and a text message from Ngan sharing it,
 11 which anybody with an Internet connection and access to a cell phone with SMS capabilities could do.

12 Lee’s analysis is incorrect, in part because it hinges on a misrepresentation of the government’s
 13 statements. According to his Declaration, one of the tasks Lee had was to determine “...where the
 14 69,370 [BTC] in the 1HQ3 wallet came from...” Lee Declaration, Dkt. No. 98-2 ¶ 3. Lee determined
 15 that it was “impossible for Individual X to gain these Bitcoins by hacking a single silk road wallet[],
 16 because the blockchain transactions show that the Bitcoins came from 58 sources.” *Id.* ¶ 17. DMG, has a
 17 blockchain analytics product, called “BlockSeer” that Lee used to analyze 1HQ3. *Id.* ¶ 15. It seems
 18 implausible that despite its blockchain analytics capabilities, BlockSeer did not identify the 54 transfers
 19 as originating from Silk Road, one of the most sophisticated and extensive criminal marketplaces of its
 20 time. Haynie Decl. ¶ 7. In fact, based on a Twitter post from @BlockSeer dated December 10, 2015,
 21 BlockSeer was aware of Silk Road (*see* <https://twitter.com/blockseer/status/674998974940508160>).
 22 According to DMG’s website, “Blockseer is an analytics tool that enables the tracking of cryptocurrency
 23 on both the Bitcoin and Ethereum blockchains. It examines cryptocurrency flows through wallets” and
 24 performs various functions, including “creating private labels and graphs . . . accessing a more extensive
 25 list of labels and clusters and additional analytics tools” and “importing and exporting analytics data
 26 such as addresses, transactions, and labels.” <https://dmgblockchain.com/software-product/>. Of the 18
 27 paragraphs in Lee’s declaration, only three of them are devoted to his own blockchain analysis. *See* Dkt.
 28 No. 98-2 ¶¶ 15-17. The declaration provides no information to show that any meaningful analysis was

1 conducted, including a description of his methodology or any graphs to illustrate any specific findings.

2 **E. The Contents of the 1HQ3 Wallet Never Became Part of the Bankruptcy Estate**

3 Acknowledging a connection between the Defendant Property and Silk Road would eviscerate
 4 Claimants' entire claims for a stake in the Bitcoin, which is why they have gone to such lengths to try to
 5 undercut that link. Because Claimants assert that their interest in the Defendant Property arises from
 6 their interest in Ngan's bankruptcy estate, it is essential to determine whether the bankruptcy estate ever
 7 maintained an interest in the Defendant Property. In evaluating the interests of the bankruptcy estate, the
 8 court must consider how property came into the possession of the debtor to determine the validity of its
 9 title to it. This is precisely why Claimants have manufactured so much doubt and conjecture about the
 10 source of the funds. As reiterated herein, the Defendant Property constitutes proceeds of narcotics
 11 trafficking and other unlawful activities. In addition, it was stolen from Silk Road. Thus, even assuming
 12 Ngan was Individual X—which he is not—the Defendant Property could not become part of the
 13 bankruptcy estate because it was stolen and represents the proceeds of crime.

14 The entirety of Claimants' rebuttal to the argument that a thief does not have a legal interest in
 15 stolen property boils down to four sentences riddled with misstatements about the government's
 16 position:

17 [T]he Government does not suggest that Mr. Ngan stole 1HQ3, or even that he got it from
 18 Individual X, who the Government says stole it. Claimants do not yet know how Mr. Ngan
 19 obtained 1HQ3, but it could certainly have been from sources unrelated to Individual X or
 20 Silk Road. And he could have been a bona fide purchaser of the Bitcoin even if it was
 unlawfully acquired originally. The claims should not be dismissed based upon the
 Government's unsupported speculation that Mr. Ngan may have stolen it or did not
 innocently acquire it.

21 Opp'n at 27. Claimants are correct that the government does not suggest—or aver—that Ngan stole
 22 1HQ3 or that he got it from Individual X. It is the government's position that Ngan has absolutely
 23 nothing to do with 1HQ3 other than invoke its mere existence for some purpose unrelated to this action.
 24 Rather, because 1HQ3 consists of proceeds of illicit activity and that it was stolen, it could not have
 25 become part of the bankruptcy estate and therefore Claimants have no legitimate claim to it.

26 Although Claimants also assert that the Defendant Property's origin as stolen Silk Road proceeds
 27 is "implausible, if not impossible," Opp'n at 19, this is flatly untrue. First, as noted above, there is no
 28 likelihood that Ngan had possession, let alone ownership, of the Defendant Property. Furthermore,

1 nothing about this theft is impossible. Bitcoin thefts of even larger proportions have taken place multiple
 2 times, including the theft of approximately 850,000 from the Mt. Gox exchange. Haynie Decl. ¶ 18.
 3 These transactions are completely unrelated to the number of addresses used in a transfer of
 4 cryptocurrency, and those transactions do not generate any documents unto themselves. *Id.* ¶¶ 5-6.
 5 Finally, the existence of an unexecuted contract does little more but to cement Ngan's continued
 6 attempts to scam others into believing that he could deliver billions of dollars' worth of Bitcoin in a
 7 single sale. None of this establishes ownership or even possession.

8 Moreover, the Defendant Property is the proceeds of drug trafficking activity. This, too, excludes
 9 the Defendant Property from the bankruptcy estate. Bankruptcy distribution plans that cannot "be
 10 executed by lawful means," including the distribution of proceeds obtained in violation of the Controlled
 11 Substances Act, are generally "forbidden by law." *In re Arenas*, 535 B.R. 845, 851 (B.A.P. 10th Cir.
 12 2015); *see also In re Burton*, 610 B.R. 633, 637-38 (B.A.P. 9th Cir. 2020) (listing cases holding that
 13 bankruptcy trustees cannot distribute the proceeds of violations of the Controlled Substances Act). This
 14 prohibition is particularly strong in cases where "a trustee would be asked to accept proceeds of a drug-
 15 related business, situations where federal law would clearly be violated." *In re Olson*, 2018 WL 989263,
 16 at *7 (B.A.P. 9th Cir. 2018) (Tighe, J., concurring); *see also In re Rent-Rite Super Kegs West, Ltd.*, 484
 17 B.R. 799, 805-806 (D. Colo. 2012) (concluding that federal courts cannot assist debtors with the
 18 distribution of an asset held in violation of the Controlled Substances Act as a matter of principle, and
 19 because of the ongoing danger that the asset in question would be subject to civil forfeiture). The
 20 bankruptcy trustee and bankruptcy court were asked to do the same thing here—accept the distribution
 21 and sale of an estate that included the stolen proceeds of various acts of crime.

22 In sum, Claimants never had ownership or possession of the Defendant Property because it could
 23 not be distributed through Ngan's bankruptcy estate as it was derived from drug trafficking and other
 24 criminal activity, as well as theft or fraud. As Claimants never could have legally owned or possessed
 25 the Defendant Property, they lack standing as a matter of law and the Court should strike their claim
 26 instead of allowing them to embark on a fruitless and time-wasting fishing expedition.

27 **F. Claimants' Challenge to the Relation Back Doctrine as it Applies to this Case is
 28 Deficient and Unsupported by the Facts**

1 With respect to the government's argument that a criminal's interest in stolen property does not
 2 become part of his bankruptcy estate because of the relation-back doctrine, Claimants' state that "the
 3 argument assumes too much." Opp'n at 27. What Claimants refer to is the fact that the Defendant
 4 Property came from Silk Road. An admission that it did would show that the Defendant Property vested
 5 in the United States at the time the criminal activity was complete. Because Silk Road was in operation
 6 between 2011 and 2013, this occurred long before Battle Born purchased Ngan's bankruptcy estate.

7 The "relation back" doctrine renders Claimants' standing arguments fruitless. It derives from 18
 8 U.S.C. § 981(f), which provides that "[a]ll right, title, and interest in property described in subsection (a)
 9 of [18 U.S.C. § 981] shall vest in the United States upon commission of the act giving rise to forfeiture
 10 under this section." The innocent owner statute provides that the property of a "bona fide purchaser or
 11 seller for value" who "did not know and was reasonably without cause to believe that the property was
 12 subject to forfeiture" is not subject to forfeiture. 18 U.S.C. § 983(d)(3)(A). The essential elements of an
 13 innocent owner claim require claimants to establish that they are "both innocent," "and an owner."

14 *United States v. One 1990 Beechcraft 1900 C Twin Engine Turbo-Prop Aircraft*, 619 F.3d 1275, 1277
 15 (11th Cir. 2010). In this case, title to the Defendant Property vested in the government at the time that
 16 the transactions on Silk Road occurred. Dkt. No. 8 ¶ 7. As noted above, all available tracing tools and
 17 publications, in addition to the documents on record in this case, indicate that the contents of the 1HQ3
 18 wallet are traceable to Silk Road. Accordingly, all interest in the Bitcoin obtained by and laundered
 19 through Silk Road vested in the government before Ross Ulbricht's arrest and trial.

20 Further, Claimants are not owners of the Defendant Property. An "owner" for purposes of the
 21 innocent owner defense "means a person with an ownership interest in the specific property to be
 22 forfeited," and does not include general unsecured creditors; bailees; or nominees with "no dominion or
 23 control over the property." 18 U.S.C. § 983(d)(6)(A)-(B). Claimants were never owners of the property
 24 because the Defendant Property never could have been a part of the bankruptcy estate.

25 Every available public record, docket entry, and brief is clear—the Defendant Property
 26 represents the stolen proceeds of Silk Road, a massive organization responsible for drug trafficking and
 27 other crimes. Claimants lack standing as the Defendant Property never became part of the bankruptcy
 28 estate, and because the relation back doctrine vested all interests in the property in the United States.

1 **G. Claimants' Discovery Plan**

2 Claimants' discovery plan makes it clear they intend to engage in protracted discovery about
 3 issues unrelated to this case. The fact that their plan includes taking the deposition of Ngan—a man who
 4 disappeared years ago and whose whereabouts are unknown—further underscores this. According to
 5 their own lawyers, Claimants have already conducted “substantial discovery efforts into Mr. Ngan’s
 6 assets, including both domestic and international collection efforts” dating back to when “the underlying
 7 Nevada state action was filed against him in 2016” and “have incurred several hundred thousand dollars
 8 in costs alone” in those efforts. *See Declaration of Joseph Gutierrez, Dkt. No 98-4 ¶¶ 7, 28, 29.*
 9 Claimants' intended discovery is improper and deficient for several reasons.

10 First, Claimants' discovery plan includes at least six discovery items relating to Ngan's
 11 associates. *See Declaration of Rees Morgan, Dkt. No. 98-6 ¶ 6(c-f, h-i).* Those discovery efforts belong
 12 in the bankruptcy case, not in this action. Second, Claimants' discovery plan assumes the existence of a
 13 relationship between Ngan and Individual X. For instance, Claimants anticipate “Document requests and
 14 deposition of Agent [] Haynie regarding . . . Ngan’s relationship both to Individual X and the 1HQ3
 15 Wallet.” *Id.* ¶ 6(b). The government has no evidence of any connection between Individual X and Ngan.
 16 Accordingly, requesting documents or depositions on this point will yield nothing. Third, Claimants
 17 intend to seek “[d]iscovery into expert reports referenced in Agent [] Haynie’s Declaration.” *Id.* ¶ 6(g).
 18 It is unclear what Claimants refer to here. There is no mention of experts in SA Haynie’s declaration,
 19 and the word “report” appears only once, followed by a link to a publicly available news article citing to
 20 that reference. *See Dkt. No. 90-1 ¶ 9.* Fourth, Claimants intend to request documents and take SA
 21 Haynie’s deposition on issues he has fully described under penalty of perjury. Specifically, they seek to
 22 depose him “regarding any investigation conducted to verify Individual X’s claim to the wallet.”
 23 Morgan Decl. ¶ 6(b). It is unclear what Claimants expect to receive beyond Individual X’s consent and
 24 SA Haynie’s analysis.

25 Finally, Morgan’s Declaration lists a series of anticipated document requests in response to what
 26 they characterize as “the Government’s assertion that if Mr. Ngan was in possession of the 1HQ3 Wallet
 27 then he must have stolen it” Dkt. No. 98-6 ¶ 7. The government has made no such characterization.
 28 To the contrary, the government has consistently stated that Ngan never possessed 1HQ3. To the extent

1 the government entertained such a theory, it was in response to Claimants' assumptions about Ngan's
 2 possession of 1HQ3 and only to demonstrate that even if their assertions were true, their claims would
 3 still fail.⁷ Accordingly, no discovery is needed on this issue.

4 This summarizes the extent of Claimants' discovery plan—it forecasts protracted discovery and
 5 litigation into irrelevant matters that would undermine the purpose of the rules and eviscerate the
 6 gatekeeping functions designed to minimize the danger of false claims.

7 **III. CONCLUSION**

8 Claimants' claims are deficient. They offer nothing besides conclusory assertions of ownership
 9 and possession of the Defendant Property; a failure to satisfy basic rules; impossible allegations; and
 10 constantly changing facts. Claimants have no right to special treatment under the rules—indeed, more so
 11 than most, Claimants had the means and the motivation to keep a close eye on the Defendant Property
 12 and file a timely claim. Their admitted failure to keep track of a multi-billion asset they thought was
 13 theirs should foreclose their claims with respect to timeliness. Moreover, Claimants clearly lack standing
 14 as a matter of law—the bankruptcy estate they claim as the font of their ownership claim never could
 15 have contained the Defendant Property. The Court must thus strike Claimants' claims. Allowing these
 16 claims to proceed and permitting discovery would invite other meritless claims to these—and other—
 17 forfeiture proceedings even if they lack a remote connection to property subject to forfeiture.

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Respectfully submitted,

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27 ⁷ With respect paragraph 8 of Morgan's Declaration, (a) whether the Defendant Property is
 28 subject to forfeiture is a legal question that has been fully briefed in this action and not something that
 could be found in an interview report or determined by the case agents, *see id.* ¶ 8(a); (b) all relevant
 tracing has been described in detail in various declarations and filings, including SA Haynie's
 Declaration submitted in support of this brief, *id.* ¶ 8(b); and (c) there is no disconnect between the
 government's tracing and Silk Road tumblers, *id.* ¶ 8(c). With respect to the last point, see SA Haynie's
 Declaration ¶¶ 31-33 which provides additional background on this issue.